APPENDIX 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, ET AL	:	
Plaintiffs	:	
VS.	:	CIVIL ACTION NO. H-79-1883
MONSANTO COMPANY, ET AL,	:	
Defendants	:	

MEMORANDUM AND ORDER:

This action was filed by Plaintiff, a Norwegian national and personal representative of the deceased, for monetary damages due to the death of Aage Lasse Alvestad. It is alleged that decedent was working off the Borgny Dolphin, a semi-submersible drilling rig, in the English sector of the North Sea and that his death was due to the negligence of Defendants and unseaworthiness of the rig. Recovery is sought pursuant to the Jones Act, 46 U.S.C.A. 688, Death on the High Seas Act, 46 U.S.C.A. 761 et seq., and general maritime law. Currently pending

before the Court is Defendants' motion to dismiss based on limitations, and the unavailability of American law and the applicability of Norwegian and English law.

Although the death occurred on the high seas, the Death on the High Seas Act ("DOHSA") is inapplicable since the suit was instituted after the statute's two-year limitation period expired.[1] 46 U.S.C. 763; Hassan v. A. M. Landry & Son, Inc., 321 F.2d 570, 571 (5th Cir. 1963). Furthermore, since DOHSA provides the "exclusive" remedy for death on the high seas, Hlodan v. Ohio Barge Line, Inc., 611 F.2d 71, 75 (5th Cir. 1980), Plaintiff's remedy under general maritime law is also foreclosed. Id; Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978); Ivy v. Security Barge Lines, Inc., 585 F.2d 732 (5th Cir. 1978), reh. en banc, 606 F.2d 524 (5th Cir. 1979).

1/ The suit was originally instituted on January 31, 1978, more than two years after the alleged wrongful death on March 22, 1975.

With respect to the Jones Act claim (applicable to the death of a seaman on the high seas. Ivy, supra at 528), as well as the general maritime and death on the high seas claims, assuming for the sake of argument that the DOHSA claim was timely filed, chcice of law considerations[2/] point to the application of foreign law, not American law, in view of the substantial contacts with Norway and England. "The broad principles of choice of law established for Jones Act cases in Lauritzen v. Larsen, 345 U.S. 571 (1953), were declared equally applicable to cases arising under the general maritime law in Romero v. International Operating Co., 358 U.S. 354, 381-4 (1959), and have been applied to suits brought under the Death on the High Seas Act. Symonette

2/ The seven well-known factors of Lauritzen are: (1) Place of the wrongful act, (2) Law of the Flag, (3) Allegiance or Domicile of the Injured, (4) Allegiance of the Defendant Shipowner, (5) Place of Contract, (6) Inaccessibility of Foreign Forum, and (7) The Law of the Forum. An eighth factor added to the list in Hellenic Lines v. Rhoditis, 398 U.S. 306 (1970), is the base of operations.

Shipyards Ltd. v. Clark, 365 F.2d 464 (5th Cir. 1966)." Fitzgerald v. Texaco, 521 F.2d 448, 454 (2nd Cir. 1975), cert. denied, 423 U.S. 1052 (1976). Also see Ying Shive Jyu Fen v. Sanko Kisen (USA) Corp., 441 F.Supp. 45 (S.D. N.Y. 1977). Additionally, in view of the fact that dismissal of the foregoing has been explained not only in terms of lack of subject matter jurisdiction (particularly with respect to a Jones Act count) but in terms of forum non convenience (particularly with respect to general maritime and Death on the High Seas counts), or both, see Gilmore & Black, The Law of Admiralty, 481-482, 294 (2nd ed. 1975); Ying Shive Jyu Fen v. Sanka Kisen (USA) Corp., supra, an application of the factors in the landmark forum non convenience case of Gulf Oil Corp. v. Gilbert[3/], 330 U.S. 501 (1947), is necessary

3/ "Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises,

and compels this court to alternatively decline jurisdiction. See Frangiskatos v. Kon Kar Maritime Enterprises, 471 F.2d 714 (2nd Cir. 1972).

For the foregoing reasons this action is DISMISSED.

Done at Houston, Texas, this 20th day of August, 1980.

SIGNED:/NORMAN W. BLACK
UNITED STATES DISTRICT JUDGE

3/ (continued)
if view would be appropriate to the action; and all other practical problems that made trial of a case easy, expeditious, and inexpensive." 330 U.S. at 508.

APPENDIX 1A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, ET AL	:	
Plaintiffs,	:	
VS.	:	CIVIL ACTION NO. H-79-1883
MONSANTO COMPANY, ET AL,	:	
Defendants	:	

FINAL JUDGMENT

From a consideration of the pleadings and materials submitted in this cause, it is the opinion of this Court that this action should be and is hereby dismissed.

This is a FINAL JUDGMENT.

Costs will be awarded to the prevailing party.

Done at Houston, Texas, this 20th day of August, 1980.

SIGNED:

NORMAN W. BLACK
UNITED STATES DISTRICT JUDGE

APPENDIX 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, ET AL,	:	
Plaintiffs,	:	
VS.	:	CIVIL ACTION NO. H-79-1883
MONSANTO COMPANY, ET AL,	:	
Defendants	:	

O R D E R

Appearances: None

Counsel	Representing

Motion(s):

Plaintiff's Motion to Reconsider	Conference Hearing Neither	 — X

Plaintiff filed this action originally on January 31, 1978. On August 20, 1980, the Court dismissed the complaint based upon limitations, lack of subject matter jurisdiction, and forum non convenience. At a conference on September 18, 1980, although Plaintiff argued that he needed

more time for discovery, his main argument was with Fifth Circuit precedent.

Additional discovery would not aid Plaintiff in this matter. Plaintiff's argument is legal, not factual, and this Court is not in a position to change Fifth Circuit law.

Accordingly, Plaintiff's Motion to Reconsider is DENIED.

SIGNED/
NORMAN W. BLACK
UNITED STATES DISTRICT
JUDGE

Date Order Entered:
9/22/80

APPENDIX 3

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MRS. AAGE LASSE ALVESTAD, ET AL	:	
VS.	:	CIVIL ACTION NO. H-79-1883
MONSANTO COMPANY, ET AL	:	

ORDER

Appearances: None

Counsel	Representing

Motion(s): Plaintiff's second motion for relief from judgment	Conference	___
	Hearing	___
	Neither	X

Since Plaintiff has filed a proper notice of appeal from the Court's Order of Dismissal, this Court is without jurisdiction to consider Plaintiff's repetitious motion. Kirtland v. J. Ray McDermott & Co., 568 F.2d 1166, 1170 (5th Cir. 1978); United States v. Dunbar, 611 F.2d 985, 987 (5th Cir. 1980); 9 Moore' Federal Practice, Paragraph 203.11 at 3-48.

Date Order Entered: December 16, 1980

SIGNED/NORMAN W. BLACK
UNITED STATES
DISTRICT JUDGE

APPENDIX 4

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(From 671 Federal Reporter, 2d Series):

Mrs. Aage Lasse ALVESTAD, Individually and as Representative of the Estate of Aage Lasse Alvestad and Their Minor Daughter, Plaintiff-Appellant,

v.

MONSANTO COMPANY, et al, Defendants-Appellees

Nos. 80-2157, 81-2015

United States Court of Appeals, Fifth Circuit

April 1, 1982

Appeal was taken from judgment of the United States District Court for the Southern District of Texas, at Houston, Norman W. Black, Jr., dismissing action arising from death of diver working off a semi-submersible oil rig in the North Sea and from order of the district court denying motion for reconsideration. The Court of Appeals, Jerre S. Williams, Circuit Judge, held that: (1) no unique circumstances were shown justifying relief from timeliness of requirement of rule requiring that notice of

appeal be filed within 30 days after entry of judgment or order appealed from, in case in which motion for new trial was not timely filed, where trial court had not assured appellant that her motion for new trial was timely or that court was extending time for filing notice of appeal, but at most acknowledged approaching deadline and indicated that it would try to accommodate appellant with speedy disposition of her motion, and (2) district court did not abuse its discretion in denying motion to reconsider, under rule governing relief from judgment, alleging only that the court had mistakenly interpreted the law.

Affirmed.

**Due to his death on December 22, 1981, Judge Ainsworth did not participate in this decision. The petition for rehearing is being decided by a quorum. 28 U.S.C. Section 46(d).

1. Federal Courts . . . 668

District court's mere willingness to entertain tardy motion for new trial does not relieve prospective appellant from responsibility for filing timely notice of appeal. Fed.Rules. Civ.Proc. Rule 4, 28 U.S.C.A.

2. Federal Courts . . . 670

No unique circumstances were shown justifying relief from timeliness of requirement of rule requiring that notice of appeal be filed within 30 days after entry of judgment or order appealed from, in case in which motion for new trial was not timely filed, where trial court had not assured appellant that her motion for new trial was timely or that court was extending time for filing notice of appeal, but at most acknowledged approaching deadline and indicated thatit would try to accommodate appellant with speedy disposition of her motion. F.R. A.P. Rule 4(a)(1, 4, 5) 28 U.S.C.A.; Fed. Rules Civ. Proc. Rules 59, 59(b), 60(b), 28 U.S.C.A.

3. Federal Courts . . . 825

Review of district court's action denying motion to reconsider under rule relating to relief from judgment was confined to whether denial of motion constituted an abuse of discretion. Fed.Rules Civ.Proc. Rule 60(b), 28 U.S.C.A.

4. Federal Civil Procedure . . . 2656

Rule governing relief from judgment is not an appropriate avenue for relief from the trial court's mistakes of law. Fed. Rules Civ.Proc. Rule 60(b), 28 U.S.C.A.

5. Federal Civil Procedure . . . 2656

District court did not abuse its discretion in denying motion to reconsider, under rule governing relief from judgment alleging only that the court had mistakenly interpreted the law. Fed.Rules Civ.Proc. Rule 60(b), 28 U.S.C.A.

Law Offices of Benton Musslewhite, Inc., Benton Musslewhite, Houston, Texas, Louis R. Koerner, Jr., New Orleans, La., for plaintiff-appellant.

Vinson & Elkins, Steven K. DeWolf, Houston, Texas, for Monsanto Co.

Baker & Botts, Randy McClanahan, Houston Tex., for Monsanto Oil, Dolphin Inter., Inc., S.A.

Appeals from the United States District Court for the Southern District of Texas.

Before THORNBERRY, TATE and WILLIAMS, Circuit Judges.

JERRE S. WILLIAMS, Circuit Judge:

Aage Lasse Alvestad, a citizen of Norway, was killed on March 22, 1975, while working as a diver off the semisubmersible oil rig Borgney Dolphin in the North Sea. The Borgney Dolphin was a Norwegian vessel operating under a contract with Monsanto Oil Company of the United Kingdom, Inc. (Monsanto UK), a wholly-owned subsidiary of the United States-based Monsanto Company. The 3X Diving Company, Alvestad's immediate employer, had contracted with Monsanto UK to provide diving services for the drilling operation.

Alvestad's widow filed suit against Monsanto and Monsanto UK in 1978, stating causes of action under the Jones Act, 46 U.S.C. 688, the Death on the High Seas Act (DOHSA), 46 U.S.C. 761-767, general maritime law, and the Texas Wongful Death and Survival statutes, Tex.Rev.Civ.Stat.Ann. arts. 4671-4678, 5525 (Vernon 1940 & Supp. 1980-1981). On August 20, 1980, the district court granted Monsanto's motion to dismiss

the action and entered a final judgment to that effect. In a Memorandum and Order filed with the judgment, the court explained that DOHSA's two-year statute of limitations had expired prior to institution of the suit, thereby barring any recovery under that statute. It further found any action pursuant to general maritime law foreclosed because DOHSA is the exclusive remedy for death on the high seas (citing Hlodan v. Ohio Barge Line, Inc., 611 F.2d 71, 75 (5th Cir. 1980). The court also found it necessary to decline jurisdiction regardless of the limitations problem because the lack of sufficient contacts between the action and this country indicated that foreign rather than American law should apply and that a federal district court would be a forum non conveniens.

It is only with the entry of final judgment against Mrs. Alvestad on August 20, however, that the critical period of this

procedural history begins. On September 10, 1980, Mrs. Alvestad filed a "Motion to Reconsider Order Dismissing Cause of Action and Motion to Reinstate and Motion to Grant a New Trial Pursuant to Rules 59 and 60 of (Federal Rules of Civil Procedure)." The court held a hearing on this motion on September 18, at which plaintiff argued that dismissal of the action was premature because she had not yet completed her discovery. Apparently hoping for a quick and favorable response to her motion, plaintiff filed no notice of appeal from the final judgment prior to September 19, when the thirty-day deadline prescribed by Fed.R. App.P. 4(a)(1) elapsed. On September 22, the district court denied the Motion to Reconsider, pointing out that the reason for its original dismissal of plaintiff's claims was legal, not factual, and that further discovery could avail plaintiff nothing. Not until October 20 did plaintiff file a notice of appeal.

Mrs. Alvestad now appeals both from the final judgment dismissing her claims and from the subsequent denial of her motion to reconsider. As explained below, we conclude that we may not consider her appeal from the judgment because her notice of appeal was not timely filed. We further find that the district court did not abuse its discretion in denying the posttrial motion to reconsider. Accordingly, we affirm the judgment entered below.

The Appeal From Final Judgment

Rule 4(a)(1) of the Federal Rules of Appellate Procedure requires that a notice of appeal be filed "within 30 days after the date of entry of the judgment or order appealed from." The district court entered its judgment dismissing Mrs. Alvestad's suit on August 20. She filed her notice of appeal on October 20, sixty-one days later and thirty-one days late. Consequently, her appeal must fail unless she falls within some exception to the rule.

Rule 4(a)(4) provides that the filing of a timely motion for a new trial under Fed.R.Civ.P. 59 will toll the running of the period for filing an appeal until the entry of an order denying the Rule 59 motion. Mrs. Alvestad filed her motions pursuant to Rules 59 and 60(b) on September 10. This was eleven days after the ten-day limit prescribed by Rule 60(b). Clearly the motion for a new trial was not timely.

While conceding the tardiness of her motion, Mrs. Alvestad presses upon us the applicability of a judicially created exception to the timeliness requirements of Rule 4. In Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215, 83 S.Ct. 283, 9 L.Ed.2d 261 (1962) and Thompson v. Immigration and Naturalization Service, 375 U.S. 384, 84 S.Ct. 397, 11 L.Ed.2d 404 (1964), the Supreme Court excused a party's failure to file a timely notice of appeal because of the "unique circumstances" in which the party had relied

upon a district court's erroneous, but nonetheless explicit, grant of an extension of the time for filing an appeal. Instead of recounting in full the significant facts of those decisions, we may resort to a previous condensation of the "unique circumstances" that were present in both:

> In each case, counsel for the appellant was lulled into the false sense of security that he could delay filing the notice of appeal until after the time prescribed by the applicable rules because of the extension of time granted by the court. In each case, the appellant was misled by the words or conduct of the trial court into believing that the time for appeal was extended beyond that prescribed by the applicable rules.

Hernandez-Rivera v. Immigration & Naturalization Service, 630 F.2d 1352, 1355 (9th Cir. 1980) (emphasis supplied).

Mrs. Alvestad argues that the "unique circumstances" of her predicament warrant our extension of the Harris-Thompson

exception to salvage her appeal. The district court heard argument on her motion on September 18, one day before expiration of the regular thirty-day limit for filing an appeal. According to Mrs. Alvestad, the court indicated its awareness that the deadline for appeal was imminent. Moreover, she claims, the court "proceeded to make comments which were properly and reasonably construed by the Plaintiffs as indicating that the Court would either rule favorably or would rule by the next day so that Plaintiffs could file their notice of appeal." Allegedly fearful that the filing of a notice of appeal would force the court to relinquish jurisdiction before it could grant her motions, Mrs. Alvestad allowed the thirty-day deadline to elapse without acting on the mandatory notice.

Even accepting this version of the hearing (apparently no transcript exists), we are not persuaded that it presents "unique circumstances" sufficient to excuse the failure

to file a timely appeal. While we willingly have administered the Supreme Court's equitable exception to avoid dismissal of an otherwise tardy appeal, we have done so only when the words or actions of the district court clearly misled the aggrieved party into believing that the filing of an appeal within the thirty-day deadline was unnecessary. In Chipser v. Kohlmeyer & Co., 600 F.2d 1061, 1963 (5th Cir. 1979), for example, we excused a plaintiff's good faith reliance on a district court's statement "which implied that a new trial had been granted without qualification". As in Harris and Thompson, the trial judge's statements gave plaintiff every reason to believe that the court effectively had extended the deadline for appeal.

(1,2) In this case, however, the district court's comments – whatever they may have been – clearly stopped short of assuring Mrs. Alvestad that her motion for a new trial was timely or that the court was extending the time for filing of a notice of

appeal.[1] At most, the court acknowledged the approaching deadline (which, in itself, should have put appellant on notice that the deadline had not been extended) and indicated that it would try to accommodate the plaintiff with a speedy disposition of her motion. The court's action is, if anything, subject to construction as an invitation for Mrs. Alvestad to request an extension of the time for filing notice, as permitted by Fed.R.App.P. 4(a)(5).

If on September 18, one day before the running of her time for appeal, Mrs. Alvestad had truly believed the district court to be favorably inclined toward her motions and close to an immediate ruling, she could have asked the court for an extension pursuant to Rule 4(a)(5). Even when the ruling did not issue until September 22, three days after

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[1] Certainly the district court's mere willingness to entertain a tardy motion for a new trial does not relieve the prospective appellant from responsibility for filing a timely notice. See, e.g., Gribble v. Harris, 625 F.2d 1173, 1174-75 (5th Cir. 1980).

her deadline was passed, she still had twenty-seven days until Rule 4(a)(5) in which to ask for such an extension.[2] Instead, having allowed the deadline for appeal to pass without requesting any relief from it, she waited nearly another month before filing the notice of appeal on October 20. Given this neglect of opportunities to obtain the desired ruling on her motions without abandoning the appeal, we cannot conclude that Mrs. Alvestad has proven herself the victim of unique circumstances justifying relief from the timeliness requirement of Rule 4(a)(1). Consequently, we do not consider the appeal from the district court's judgment.

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[2] Alternatively, appellant could have filed the notice of appeal. Although the filing of a notice of appeal divests the trial court of jurisdiction, see United States v. Dunbar, 611 F.2d 985, 987 (5th Cir. 1980) cert. denied, 447 U.S. 926, 100 S.Ct. 3022, 65 L.Ed.2d 1120 (1980), Mrs. Alvestad would have been able to seek a remand to the district court when and if it agreed that a new trial or some alteration in its judgment was appropriate.

The Rule 60(b) Motion

(3) The district court denied Mrs. Alvestad's Rule 60(b) Motion to Reconsider on September 22, and the notice of appeal filed October 20 is timely with respect to this order.[3] Our review of the district court's action is confined to whether denial of the motion constituted an abuse of discretion. Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

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2 (continued)
See 7 J. Moore, Federal Practice, Para. 60.30(2) at 419-24 (1970). If this court had declined to take such a course, appellant still would have been in a position to secure any merited relief through our review of the district court's actions.

3 Appellant filed a second Rule 60(b) motion on October 16. The district court subsequently declined to consider this motion when the October 20 notice of appeal removed jurisdiction to this court. The district court already had denied the first Rule 60(b) motion (on September 22) when appellant filed her notice of appeal on October 20, however, so the timely notice is sufficient to support an appeal from that order.

Appellant relies upon three of the six reasons for which a district court may relieve a party from judgment under Rule 60(b): "(1) mistake, inadvertence, surprise or excusable neglect; . . . (4) the judgment is void; . . . or (6) any other reason justifying relief from the operation of the judgment." She then cited Compton v. Alton Steamship Company, 608 F.2d 96 (4th Cir. 1979), for the proposition that these three grounds for relief collectively encompass a trial court's mistakes of law. Mrs. Alvestad's complaint about the judgment, simply stated, is that the court below prematurely shut off her discovery and erroneously applied the Jones Act's definition of "employer", the law of conflicts, and the doctrine of forum non conveniens to the facts of this dispute.

(4) Without reaching the merits of these contentions, we do not regard Rule 60(b) as an appropriate avenue for relief from judicial mistakes of this kind. The Fourth Circuit

in Compton undeniably construed Rule 60(b) as providing for relief from legal errors committed by a trial court. However, it referred only to situations in which "the mistake was clear on the record, and involved a plain misconstruction of the statute on which the action was grounded...." 608 F.2d at 104. Our own decision in Meadows v. Cohen, 409 F.2d 750 (5th Cir. 1969), quoted extensively in Compton, held a district court to have abused its discretion in not granting a Rule 60(b) motion for relief from a judgment "which was clearly at variance with the plain wording" of a federal statute. Id at 753.

While we thus have admonished district courts that they should honor requests to reform a judgment in obvious conflict with a clear statutory mandate, we have been equally insistent that Rule 60(b) is not a substitute for the ordinary method of redressing judicial error - appeal. In its

origins, Rule 60(b) "represents an effort to codify the equitable practice with respect to the correction of judgments after the time for appeal has expired." Lafferty v. District of Columbia, 277 F.2d 348, 351 h.6 (D.C.Cir. 1960). It is not a means for postponing or escaping that expiration.

In Gary W. v. Louisiana, 622 F.2d 804 (5th Cir. 1980), cert. denied 450 U.S. 994, 101 S.Ct. 1695, 68 L.Ed.2d 193 (1981), appellant who had neglected to appeal an award of attorneys' fees against them sought relief from the judgment through a Rule 60(b) motion. On appeal from the district court's denial of their motion, appellants maintained that this denial was an abuse of discretion because the court had committed the "mistake" of applying the wrong legal standard. "(E)ven if the trial court had misapplied an incorrect legal standard when assessing legal fees," we observed in affirming the denial, "the proper way to challenge its ruling in the

court of appeals is by appeal of its ruling, not by appeal of a denial of a Rule 60(b) motion." 622 F.2d at 805 (footnote omitted).[4]

Similarly, in Fackelman v. Bell, 564 F.2d 734 (5th Cir. 1977), this court rebuffed an appellant's effort, to use Rule 60(b) to reopen an adverse judgment on the ground that the district court had erroneously interpreted the Freedom of Information Act:

> All of these mistakes, if mistakes they be, are mistakes of law and could have been raised on appeal. The law of this Circuit permits a trial judge, in his discretion, to reopen a judgment on the basis of an error of law . . . But such reopenings are certainly not mandatory. The orderly process of appeal usually is far more appropriate to deal with such errors.

564 F.2d at 736.

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[4] Moreover, this court long ago listed eight factors as stated by Prof. Moore in his treatise, that guide a district court's consideration of a Rule 60(b) motion. See United States v. Gould, 301 F.2d 353, 355-56 (5th Cir. 1962). One of the foremost is "that the Rule 60(b) motion is not to be used as a substitute for appeal." See also Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). Even Professor Moore, to whom we may trace the controversial idea that "mistake" under Rule 60(b) includes "mistakes of law", see Silk v. Sandoval, 435 F.2d 1266, 1267 (1st Cir. 1971), cert. denied, 402 U.S. 1012, 91 S.Ct.

(5) As Fackelman went on to explain, we have attempted in our prior decisions on Rule 60(b), including Meadows, merely to avoid wasting appellate resources on the perfunctory correction of "obvious errors of law." Id. This case contains no such facially obvious error. Although appellant employs the customary rhetorical device of depicting each alleged error as clear and beyond question, the only thing made clear by the numerous brief submitted by all parties to this dispute is that the legal questions presented are at least arguable. Without intimating any view of the merits, we are certain that an inquiry into whether the court below properly applied the seven-part choice-of-law test announced in Lauritzen v. Larsen, 345 U.S. 571, 583-91, 73 S.Ct. 921, 928-32, 97 L.Ed. 1254 (1953) or the similarly multi-faceted

4 (continued)
2189, 29 L.Ed.2d 435 (1971) (citing with disapproval 7 J. Moore, Federal Practice Para. 60.22(3) (1970)), agrees that Rule 60(b) is no alternative to an appeal. See Moore, supra, Para. 60.27(2) at 353.

forum non conveniens analysis required by Gulf Oil v. Gilbert, 330 U.S. 501, 508-09, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947) is one which could have and more suitably which should have been undertaken on appeal rather than as a mere prelude to an attempt to show discretionary abuse under Rule 60(b).

In sum, therefore, we cannot say that the district court abused its discretion in denying a Rule 60(b) motion alleging only that the court had mistakenly interpreted the law. The judgment below is AFFIRMED.

APPENDIX 5

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NOS. 80-2157
&
81-2015

MRS. AAGE LASSE ALVESTAD,
Individually and as Representative
of the estate of Aage Lasse Alvestad
and their minor daughter,

Plaintiff-Appellant

versus

MONSANTO COMPANY, ET AL,

Defendants-Appellees.

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Appeals from the United States
District Court for the
Southern District of Texas

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 4/1/82, 5 Cir., 198_, _____ F.2d ___)

(May 17, 1982)

Before THORNBERRY, TATE and WILLIAMS, Circuit Judges

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court

having requested that the Court be polled on rehearing en banc, (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is DENIED. . .

ENTERED FOR THE COURT:

SIGNED/J. WILLIAMS
United States Circuit Judge

APPENDIX 6A

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AMENDMENT XIV - UNITED STATES CONSTITUTION

AMENDMENT XIV . . .

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . .

APPENDIX 6B

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Rule 4 - Federal Rules of Appellate Procedure

(a) Appeals in Civil Cases . . .

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later. . .

APPENDIX 6C

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Rule 26 - Federal Rules of Appellate Procedure.

(a) Computation of Time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

APPENDIX 6D

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Rule 12 - Federal Rules of Civil Procedure

Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on Pleadings

. . .

(b) How Presented. Every defense, in law of fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading

or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. . .

APPENDIX 6E

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Rule 56. Federal Rules of Civil Procedure. Summary Judgment . . .

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be

rendered on the issue of liability alone although there is no genuine issue as to the amount of damages. . .

(e) Form of Affidavits; Further Testimony; Defense Required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuire issue for

trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just. . .

APPENDIX 6F

Rule 59. Federal Rules of Civil Procedure. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment. . .

APPENDIX 6G

Rule 60 - Federal Rules of Civil Procedure

Relief from Judgment or Order

. . . (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should

have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or pcoeeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949.

EXCERPTS
APPENDIX 7

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, Individually and as Representative of the Estate of AAGE LASSE ALVESTAD, and their minor daughter	:	C.A. NO. H-79-1883
	:	(Filed Sept. 10, 1980)
VS.	:	
MONSANTO COMPANY, ET AL	:	

MOTION TO RECONSIDER ORDER OF THE COURT DISMISSING CAUSE OF ACTION AND TO REINSTATE CAUSE OF ACTION AND MOTION TO GRANT A NEW TRIAL PURSUANT TO RULES 59 AND 60 OF F.R.C.P.

TO THE HONORABLE JUDGE OF SAID COURT:

. . .

I.

While the Defendant's Motions to Dismiss under Rule 12(b) and for forum non conveniens have been pending for quite some time, the undersigned counsel took over as attorney in charge on August 5, 1980, in lieu of Louis Koerner, who became unavailable due

to ungoing litigation in the State of Pennsylvania, and mailed on August 6, 1980 a Motion to Defer Determination of Defendant's Motion to Dismiss Under Rule 12(b) F.R.C.P., on Grounds of Forum Non Conveniens and on Grounds of Limitations, which Motion to defer and the transmittal letter are attached hereto as Exhibit A and incorporated herein by reference. On August 11, 1980, Plaintiff received a notice from the Court which is attached hereto as Exhibit B and incorporated herein by reference that the Court was placing the Plaintiff's Motion to Defer upon the "Court's written motion docket for September 1, 1980". Nine days later Plaintiff received the Memorandum and Order of this Court dismissing this cause on grounds of forum non conveniens, same being attached hereto as Exhibit C and incorporated herein by reference.

II.

Plaintiff is hopeful that the Court was unaware of the Plaintiff's Motion to Defer

because the Court did not give the Plaintiff an opportunity to have said Motion presented and heard as per its notice of August 11, 1980 (Exhibit B). In that connection Plaintiff would call to the attention of the Court that a notice of deposition is attached to said Motion to Defer which calls for the deposition of the corporate officers of the various companies involved including Monsanto Oil Company, U.K., Inc., Dolphin International, Inc., Monsanto Company, and the various individuals who would have the information, charters, agreements, records, Board of Directors lists and other information which would be necessary for the Plaintiffs to properly prepare their case. Depositions were set for August 26 and August 27, 1980 at 9:00 a.m. but Defendants declined to present their witnesses due to this Court's Order of August 20, 1980.

III.

Your Plaintiff would respectfully show to the Court that it would be premature and a gross miscarriage of justice to pre-

clude the Plaintiffs from taking the depositions, sought by the above referred to notice and to permit the Plaintiffs to have further discovery in this matter. Attempting to get the Defendants to cooperate with respect to discovery has been difficult if not impossible in this case. The Plaintiffs have filed interrogatories addressed to the Defendants as indicated by the Court file in this cause. Reference is now made to said interrogatories. The Court file also reflects that the Defendants have either objected to or not filed answers to those interrogatories. In the meantime the Defendants, in their pleadings and motions, have represented that the vessel in question, the Borgny Dolphin, had nothing to do with the United States and there was no connection between the vessel and the United States. Late last year the Plaintiff understood from different sources that this was not true and that the vessel was directly

and/or indirectly controlled by the United States through various corporations and the Plaintiff then began to secure documents from a non-defendant, Occidental Petroleum Company. Those efforts were difficult and it was not until May of this year that Plaintiff was able to secure those documents. It took several months for Plaintiff to arrange to secure said documents from Occidental (the Defendants having refused to produce them through interrogatories) and they were finally subpoenaed from Occidental; as an indication of the difficulty involved, letters and the deposition of Mr. Christovich, attorney for Occidental, are attached hereto and incorporated herein by reference and marked Exhibit D.

IV.

In order to secure said documents it became necessary for Plaintiff's counsel to make a trip to England which, as stated above, was done in May. The documents finally produced by Occidental show that the vessel in

question was probably controlled by corporations which are American corporations and which have their base of operations in the United States. A sample of those documents are attached hereto in a group marked Exhibit E. Plaintiff respectfully urges the Court to read these documents to see how incorrect, misleading and hallow the representations of Defendants have been in their pleadings that this vessel had no connection with the United States of America.

V.

At the time those documents were finally procured Plaintiffs' attorney in charge at that time, Louis Koerner, was called to trial in a very complicated anti-trust case in Pennsylvania and though he expected to have the case completed before now he is still in trial in that case to this very date. In July of this year when he saw that the trial was going to continue on, Mr. Koerner requested that the undersigned attorney take charge of the case and it was then, in early August of 1980 that

Plaintiff's counsel was able to procure enough of the files to begin to take charge of the case and manage the case on the docket. As noted above, Plaintiff then on August 11, 1980 filed a motion with the Court to defer determination pending further discovery and noticed the Defendant's witnesses for depositions. Plaintiffs would show that it would not have been sufficient, proper or good practice to have taken the deposition of these witnesses before procuring documents from Occidental which, through no fault of the Plaintiffs, were not procured until May, 1980, Thus, under these circumstances it would be a gross miscarriage of justice to preclude these Plaintiffs from having the opportunity to corroborate the documents procured from Occidental and to show clearly that the Borgny Dolphin was in truth and in fact, as found by the Court in cases hereinafter cited, subject to the control and direction of persons or officers living and working

in the United States of America. Incidentally, the records which are attached hereto were produced by Occidental pursuant to a subpoena and therefore are official records of this Court and are verified as per verification of this motion and pleading.

VII.

Plaintiff respectfully requests the Court to call an oral hearing upon this Motion since all defense counsel will oppose same and at such time and place Plaintiff would respectfully request permission to show the Court the entire files on the Alvestad case which would demonstrate to the Court that diligent efforts have been made by the Plaintiff to obtain discovery through the most cooperative manner and with the least trouble to the Defendants. Finding that such considerate tack has not produced the desired information, Plaintiff has noticed the deposition and intends to follow through such depositions until the information which will decide these issues one

way or the other, on a fully informed basis, has been obtained. Plaintiff would show that no harm will befall either party should this Court decide to give the Plaintiff opportunity to secure the information needed. . . . . .

X.

Plaintiff would further show that this Court would commit grave error if it did not permit an oral hearing on Defendant's Motions to Dismiss and Plaintiffs' Motion for Rehearing. Those motions are summary motions which terminate the litigation and are of the most serious nature. There is a multitude of authorites that it is absolute error for a Court to refuse to grant a hearing on such motions, and in this connection Plaintiff would show that no such hearing has been held in this case. If this motion is not clear we now specifically and expressly request this Court to grant us a hearing on the Defendants' Motions to Dismiss, upon our motions to reinstate,

upon our motions for new trial, and upon our motions for additional time in which to conduct discovery and for such other and further motions as may be necessary and proper to see that justice is done in this case. In connection with the failure of the Court to grant such hearing see Brown v. Quinlan, 138 F.2d 228, 229 (7th Cir., 1943); Dredge Corporation v. Penner, 338 F.2d 456, 461-462 (9th Cir. 1964); Season-All Industries, Incorporated v. Turkiye-Sise Ve Cam Fabrikalary A.F., 425 F.2d 34 (3rd Cir., 1970).

XI.

Moreover, it is error for the Court to grant summary relief such as this when the Defendants have not answered the interrogatories. Dollar v. Long Mfg., Inc., 561 F.2d 613 (5th Cir. 1977); Coleman v. Checker Taxi Co., 325 F.2d 853 (7th Cir., 1963) and see particularly Parrish v. Board of Commissioners of Alabama State Bar, 533 F.2d 942 (5th Cir., 1976), where the Fifth Circuit Court stated:

"Of course, the whole purpose of discovery in a case in which a motion for

summary judgment is filed is to give the opposing party an opportunity to discover as many facts as are available and he considers essential to determine whether he can honestly file opposing affidavits. We conclude that the granting of the motion for summary judgment by the trial court without requiring the production of these documents requested deprive the Appellants of an opportunity to develop the facts on which they sought to create a fact issue before the trial court." (emphasis ours).

Also see particularly Bane v. Spencer, 393 F.2d 108 (___ Cir. 1968) where the _____ Circuit Court stated.

"Furthermore, it should be fundamental that a defendant who has failed to answer relevant and timely interrogatories is, at least normally, in no position to obtain summary judgment."

In this connection it is not necessary that Plaintiffs file motions to compel; the rule is simply based on the fact that a person coming in the Court asking to terminate the other side's litigation has to show that it has done all that it can to produce information required or asked for in connection with the grounds for terminating their litigation. These Defendants have produced

nothing, have been obstreperous about cooperating on anything, and now they want to benefit and profit from their failure to produce information in answer to interrogatories and the Courts hold that it is unjust and unproper (to grant) summary relief (where Defendants have) not done (their) part in cooperating with respect to discovery.

XII.

Therefore, your Plaintiff urgently requests this Court not to deprive this widow of her day in Court. Numerous cases indicate that the trend in American law is that the Courts are disregarding the device of Defendant's setting up subsidiary and foreign corporations in order to avoid American law, when a realistic view of the situation is that the ultimate control of a rig really is based in the U.S. (see authorities cited above and opinions attached hereto). Most importantly, the Plaintiff simply has not had its day in Court with respect to the Defendants' motions.

As many Courts have indicated, time is not the sole measure of appropriate discovery; when the record clearly reflects, as it does here, that the Plaintiffs have been diligent in seeking the documents which it finally got, not from the Defendants, but from a non-party, and that when those documents were obtained, it revealed the distinct possibility, even probability, that the rig in question was ultimately controlled out of the U.S., it is Plaintiffs' position that it would be a clear abuse of error to refuse further discovery on the Defendants' motions. The Fifth Circuit has recently granted one or more writs of mandamus in cases where the Trial Court has failed to have an oral hearing on Motions to Dismiss. See In Re Cooper Fire & Rubber Co., Petitioner, Cause No. 78-2105 (5th Cir., dated 8-31--8); see also In Re Textron, Inc., et al, Petitioners, Cause No. 79-2216 (5th Cir., dated 11-19-79).

. . .

Respectfully submitted,

LAW OFFICES OF
BENTON MUSSLEWHITE,
INC.

SIGNED/BENTON MUSSLEWHITE
3506 Travis St.
Houston, Texas 77002
(713)520-0621

EXCERPTS
APPENDIX 8
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, ET AL	:	
	:	(Filed Oct. 16, 1980)
V.	:	
MONSANTO COMPANY, ET AL	:	NO. H-79-1883

MOTION OF THE PLAINTIFFS FOR RELIEF
FROM THE FINAL JUDGMENT OF THIS COURT
DATED AUGUST 20, 1980,
PURSUANT TO RULE 60(b)
OF THE FEDERAL RULES OF CIVIL PROCEDURE
AND FOR RELIEF UNDER THE GENERAL
POWER OF THIS COURT TO RESCIND
ITS ORDERS AND JUDGMENTS AND REINSTATE
A CAUSE OF ACTION AND GRANT FURTHER RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs and moves the Court for relief from the Judgment of August 20, 1980, requesting the Court to rescind said Order and Judgment to reinstate this cause of action, to grant reasonable time for discovery with respect to the Defendants' Motion to Dismiss, and, upon completion of discovery, to deny Defendants' Motion to Dismiss, grant this Plaintiff its day in Court and in such respects would respectfully show as follows, to-wit:

I.

An Itemization of Procedural Events Before This Court and the Posture of this Case Procedurally

1. Plaintiff filed suit on January 27, 1978 in the United States District Court for the Eastern District of Texas, Sherman Division, against the Defendants, Monsanto Company (hereafter referred to as "Monsanto") and Monsanto Oil U.K. (hereafter referred to as "Monsanto U.K."). Plaintiff alleged a cause of action under the Jones Act, 46 U.S.C. Section 688, General Maritime Law; and The Death on the High Seas Act, as well as the Wrongful Death and Survival Statutes of the State of Texas. The Plaintiff alleged that the decedent, Aage Lasse Alvestad, was a crew member of the vessel, "Borgny Dolphin", on about the 22nd day of March, 1975, when he met his death due to the unseaworthiness of the Borgny Dolphin and "the negligence of the agents, servants and employees of the Defendants". The Estate of Mr. Alvestad sought damages on behalf of his surviving widow and child.

2. On March 14, 1978, one of the Defendants, Monsanto Company, filed a Motion to Dismiss and/or for Summary Judgment, without first having answered and the Court advised such Defendant that it was improper to bring such Motion before filing an answer. Thereafter, said Motion was considered moot, never responded to and never brought forward by the Defendant. The Court's Order ordering the Defendant to Answer before filing any Motion for Summary Judgment was dated April 3, 1978 and is now referred to for all purposes.

3. Soon after the filing by the Defendant Monsanto, of its Motion for Summary Judgment and Motion to Dismiss, Plaintiff submitted Interrogatories to the Defendant Monsanto and the Defendant Monsanto U.K. and on April 5, 1978 the Defendant Monsanto filed its Objections to the Interrogatories and a Motion for Protective Order, urging the Court that it should not have to answer any of said interrogatories. Said interrogatories were aimed at Defendant's Motion to Dismiss.

4. Thereafter, the Plaintiff filed a Motion to Compel Answers to Interrogatories by the Defendant Monsanto and, following the filing of such Motion, the Defendant Monsanto, on May 26, 1978, filed partial Answers to Interrogatories. The Defendant refused and failed to answer (which was also made a part of their Objections to Interrogatories and Motion for Protective Order) Interrogatories Nos. 9, 10, 11, 15, 21, 27, 29, 23, 25, 34, 35 and 36. . .

5. Defendant Monsanto admitted in its Memorandum Brief and Response to Plaintiffs' Motion to Compel Answers to Interrogatories, filed in the Sherman Court, all of which pleadings were transferred to this Court, that "Interrogatories Nos. 9, 10, 11, 15, 21, 27 and 29 are obviously intended to develop information on facts the Second Circuit at least has held to be significant under Rhoditis....as noted, Monsanto has not jurisdiction in issue..." (page 3 of Monsanto

Company's Memorandum Brief). Therefore, Monsanto even agrees that the information requested in the interrogatories was relevant to a Motion to Dismiss (which it stated at that point had not been placed in issue) but when a subsequently filed motion to Dismiss on the same grounds as previously filed by the Monsanto Defendants was placed in issue this Court never compelled the Defendant to answer those questions which the Defendant admitted themselves were material to the dismissal motions in issue. Without any quetsion, this Court erred in failing to do so, as noted by decisions hereinafter discussed.

6. In that connection, we call the Court's attention to the fact that it notified all parties on April 12, 1978, that the Plaintiff had filed a Motion to Compel Answers to Interrogatories, that the Motion had been served on all adverse parties, and that "the local rule is to consider motions on the

pleadings, without oral hearing, unless, on showing of good cause, an oral hearing is granted...request for oral hearing, if any, should be made when the motion or the reply is filed." The Court made it clear that if neither party requested an oral hearing upon such motion to Compel same would be ruled upon by the Court upon the pleadings and the motions without such hearing. This rule conforms to the rule of the Houston Division for the Southern District of Texas. No oral hearing on the motion to compel was ever requested by any of the parties; yet despite the Court's notification, neither the Sherman Division nor the Houston Division ever ruled upon Plaintiffs' Motion to Compel. There is nothing in the rules we know of that places a burden upon the Plaintiff, or any party, to request the Court a second time to rule upon motions to compel. Once the Court indicates it will rule upon such motion, all parties certainly should be entitled to assume that it will do so prior to taking

such drastic action as granting a motion to dismiss on matters to which the motion to compel related. Since the court never ruled on the Motion to Compel, the Defendants never answered the mentioned Interrogatories or provided the information requested therein.

. . .

14. On July 28, 1978, the Plaintiffs submitted Additional Interrogatories and Requests for Production of Records to Defendants Monsanto and Monsanto U.K. Thereafter, both Defendants filed objections to said interrogatories and never answered said Interrogatories. Said interrogatories included crucial questions such as: (No. 1)....identify all officers, agents or employees of 'Defendant' who exercised control over and gave direction to the decedant, to his immediate employers, to Dolphin International, S.A. or to Dolphin International, Inc., or who were in charge of or engaged in supervision of contractors, subcontractors or crew members in the ....

operation....of the 'Borgny Dolphin';....
(No.2) identify all documents, communications and contacts concerning the Borgny Dolphin, its chartering, control or its operation and all other contractual or legal relationships involving the operation of said vessel or contacts or contracts with Dolphin International, S.A., Dolphin International, Inc.; all reports, invoices or other materials concerning the maintenance or oepration of the 'Borgny Dolphin'; and all reports concerning the casualty and investigation of the death of the decedant; all contractual and other agreements between one or more of the Defendants and Dolphin International, S.A. or Dolphin International, Inc.; and all payroll records, time sheets or documents pertaining to the work activity of the decedant;....(No. 3) identify all Defendants' employees of either the Monsanto companies or the Dolphin companies who were employed or consulted or had employment duties

regarding the operation or maintenance of the Borgny Dolphin;....(No. 5) state places of incorporation and principal places of business of the Monsanto and Dolphin companies, and the 3 X Diving Company;.... (No. 6) identify all the documents between the two Dolphin companies, the Monsanto companies, and the 3 X Diving Company;.... (No. 9) identify all owners of the Borgny Dolphin and the percentage or fractional ownership of each;....(No. 10) identify the persons of entities and their relationship to any of the various Defendants and/ or the Borgny Dolphin, including Dolphin International, Inc., Dolphin International, S.A., Demenex, 3X Diving Company, Ltd., Bob Colomy, Martin David, Gary Miller, David Compton, Fred Olsen and Company, Kurt Knut Solvang, Newton Schoals, Ron Edwards, Chemical Bank of New York, Export Import Bank of Washington, D.C., Occidental Oil Company, Occidental Britain, Inc.;....(No. 11) identify all diving contracts in effect concerning the

Borgny Dolphin pursuant to which the decedant was employed, and particularly the parties to the contract and those persons or entities who received copies of said contract;....(No. 12) identify all drilling contracts in effect concerning the Borgny Dolphin pursuant to which the decedant was employed or was working, including the parties to the contract and the persons who received copies of same;....(No. 13) identify the person responsible for the financing the operation of the Borgny Dolphin;....(No. 14) whether the decedant was employed as a seaman or what task he was performing on the date of his casualty, including a description of his duties and identify the person or persons responsible for his being hired and controlling his work on board the vessel;....(No. 15) identify all persons, firms and corporations to whom funds were remitted as derived from the activities of the Borgny Dolphin;....(No. 16) identify all documents, including contracts

submitted to the Chemical Bank of New York and the Import-Export Bank in Washington, D.C., with regard to the financing and operation of the Borgny Dolphin;....(No. 17) identify all entities, other than Monsanto U.K., who the Defendants contend caused or contributed to the death of the decedant and/or was a Jones Act employer of the decedant, other than Monsanto U.K.; ....(No. 19) identify all employees of the Defendants, Dolphin International, S.A. and Dolphin International, Inc., who were employed in a supervisory capacity on the vessel in question;....(No. 20) identify the Borgny Dolphin, including the type of vessel it was;....(No. 21) identify the company ultimately responsible for the operation of the Borgny Dolphin;....(No. 22) identify the parties responsible for the promulgation of rules and regulations and the carrying out of such rules and regulations concerning the operation of the Borgny Dolphin;....and (No. 25) explain the nature

the relationship each of the Monsanto Defendants had to the Borgny Dolphin on March 22, 1975. The other Interrogatories contained therein related to liability, the question of unseaworthiness and/or negligence. In that same document, the Plaintiffs requested production of all the documents that were identified. It is inconceivable that this Court would rule without answers to those interrogatories having been made and without and production of the documents mentioned therein. As we point out under Argument and Authorities below, it is self-evident that all of said questions were absolutely and totally relevant and controlling of the decision to be made by this Court. . . .

17. On November 27, 1979, the Defendant Monsanto U.K. filed its Motion to Dismiss on the grounds of limitations, alleging that Plaintiffs' suit was time barred because the only remedy available to the Plaintiffs was the Death on the High Seas

Act which had a two-year statute of limitations. It asserted that as a matter of law the decedant was not the Jones Act employee of the Defendant Monsanto U.K. No affidavit was attached to said motion. On January 31, 1980, Dolphin and Dolphin S.A. filed a Motion to Dismiss on grounds of limitation. The Dolphin Defendants contended that the cause of action was time barred against them because, as a matter of law, the decedant was not the Jones Act employee of said Defendants, but was the Jones Act employee of 3X Diving Company, Ltd. of Stavenger, Norway, and that the Plaintiffs' only cause of action against the Dolphin Defendants was under the Death on the High Seas Act which provides for a two-year Statute of Limitation and therefore Plaintiffs cause of action was barred by limitations. No affidavit was attached to said Motion. On January 9, 1980, the Defendant Monsanto filed a Motion to Dismiss under Rule 12(b), F.R.C.P. and on grounds of forum non conveniens. Again,

no affidavit was attached to said Motion. There was an affidavit filed in conjunction with the Motion prematurely filed by Monsanto Company in March, 1978, namely the Affidavit by Louis Fernandez, but in that affidavit he merely swore that Monsanto Company did not lease, charter, or control the Vessel, "Borgny Dolphin", and that Aage Lasse Alvestad was not its employee. Those general statements applied only to Defendant Monsanto Company, and not to the Defendant Monsanto U.K.

18. Since the Defendants had failed to answer the interrogatories of the Plaintiffs or to produce the requested documents, the Plaintiffs began working through other sources in an effort to secure relevant documents. On October 16, 1979, A. R. Christovich, Jr., who represents the Occidental companies, sent certain documents to the Plaintiffs which are attached to the affidavit attached to this motion but in

said letter Mr. Christovich refused to provide the 3X Diving Contract, Occidental of Britain, Inc. letter to 3X concerning "Borgny Dolphin" work and a report of David Colomy concerning the "Borgny Dolphin", all of which were extremely relevant documents (said letter is attached hereto as Exhibit A-1). On January 28, 1980, Plaintiffs got out a subpoena duces tecum to A. R. Christovich of Occidental Petroleum Company, subpoenaing the documents in Occidental File No. 1-20-21, relative to the "Borgny Dolphin". A copy of said subpoena duces tecum is attached hereto as Exhibit A-2. Simultaneously, the Plaintiffs noticed the deposition of Mr. Christovich and noticed all parties of its intent to secure production of documents from Occidental Petroleum Company on February 11, 1980. Said notice is attached to this Motion as Exhibit A-3. On February 6, 1980, Mr. Christovich responded to the subpoena duces tecum by letter to Louis R. Koerner who,

at that time was Plaintiffs' Attorney In Charge; the sum and substance of the letter was that Mr. Christovich refused to appear on February 11, 1980. Said letter is attached hereto as Exhibit A-4.

19. In the meantime, this Court had placed on the Court's Motion Docket the Defendant Monsanto Company's Motion to Dismiss for January 28, 1980 and then reset the submission date to February 18, 1980. However, on February 18, 1980, Cynthia Norris of Mr. Koerner's office wrote Defendant attorney, Randy McClanahan, with carbon copy to the clerk, documenting the agreement of the parties "to pass the submission date of February 18, on the outstanding motions in the above referenced cause until after production of documents on February 29, 1980....after the production of documents, we will need to decide on a date for submission of the motions....In accordance with my agreement with you, I will copy the entire file which is produced during the document production and forward

same to you...I understand that you will not be in attendance but that Steven DeWolf of Vinson and Elkins will....by copy of this letter, I am advising the Court of our agreement...If you have any quetsions concerning the upcoming production of documents, please do not hesitate to call." (Said letter is attached hereto as Exhibit A-5). By virtue of the foregoing letter, the parties passed the submission date of February 18, 1980 and so far as we know no other submission date was ever reset by the Court nor by the parties prior to the Court ruling on the motions on August 20, 1980.

20. . . . On March 30, 1980, Mr. Martin R. David of Occidental International Oil, Inc., the person Mr. Cossey wrote and said would provide the documents, was written to set up an appointment on May 12, 1980 for the production of the documents. Said letter is attached hereto as Exhibit A-11. Copies of that letter were sent to Mr. McClanahan as well as Mr. Steven DeWolf and

Mr. Paul Brezac who is the Court coordinator for this Court. On April 14, 1980, Mr. Patton of the Occidental International Oil Company, Inc., with office in London, wrote to confirm the appointment of May 12, 1980 for the production of the documents in question. Said letter is attached hereto as Exhibit A-12.

21. Following production of the records on May 12, 1980 (said records and the relevance thereto are hereinafter discussed) Plaintiffs attorney in charge, Mr. Louis Koerner, went to trial in a complicated anti-trust case in June, 1980 in Pennsylvania (see Affidavit and sworn averments in Plaintiffs' Motion to reconsider previously filed with this Court, which Motion to reconsider and all attachments thereto are incorporated herein by reference). Realizing that said case was going to go on longer than he thought, Mr. Koerner, in July, 1980, asked Mr. Musslewhite to take over this case as attorney in charge, which

Mr. Musslewhite agreed to do. Within two weeks, Mr. Musslewhite was able to pick up a great portion of the file and immediately thereafter, on August 6, 1980, filed a Motion to Defer Determination of Defendants' Motions to Dismiss, which Motion to Defer is attached hereto as Exhibit B-1. Attached to that Motion to Defer was a Notice of Intent to Take Oral Depositions of relevant corporate officers of the Monsanto Defendants and the Dolphin Defendants, which Notice of Intent to Take Oral Deposition is attached hereto as Exhibit B-2. The depositions were set for August 26 and August 27, 1980. On August 11, 1980, this Court notified the Plaintiffs that their Motion to Defer would be placed on the Court's Written Motion Docket for September 1, 1980. Said Notice of the Court is attached hereto as Exhibit B-3. On August 20, 1980, despite the fact that this Court had not reset submission after the parties had agreed to pass the submission of February 18, 1980 (with

copies of such agreement to the court coordinator) and despite the fact that the Plaintiffs had filed a Motion to Defer and had noticed depositions for discovery with respect to Defendants' Motions and the Court had not ruled upon said Motion to Defer, and despite the fact that the only sworn affidavit filed in support of Defendants' motion was that of Louis Fernandez, which only referred to the Monsanto Company and did not refer to the Dolphin Defendants or Monsanto U.K., this Court entered a Memorandum and Order and Final Judgment dismissing this cause of action on the grounds that suit under the Death on the High Seas Act was barred by limitations and that the Jones Act suit would be dismissed on grounds of forum non conveniens and choice of law. Said Memorandum and Order is referred to for all purposes. On August 15, 1980, Plaintiffs filed their Motion to Reconsider Order Dismissing Cause of Action and Motion to Reinstate and Motion to Grant a New Trial.

Said Motion was placed upon the Courts "Written Motion Docket for October 6, 1980". Said Motion to reconsider and to reinstate is referred to for all purposes and incorporated herein by reference. The Notice of the Court setting the Motion on the Court's Written Motion Docket is incorporated herein by reference. Since October 6, 1980 would have been more than thirty days following the Court's final Judgment and Order of August 20, 1980 the Plaintiffs specially requested a hearing and the earliest date such hearing could be arranged was September 18, 1980, just one day before the 30 days from the final Judgment and Order would expire.

21. A hearing was had on September 18, 1980 and as such hearing began the Court stated that at the time it entered its Memorandum and Order of August 20, 1980 it was not aware of the Plaintiffs' Motion to Defer or the Notice of Depositions attached thereto.

The Court further indicated that it realized the Plaintiffs had a time limit with respect to filing an appeal. Because of such comments, Plaintiffs' counsel assumed that the Court was aware of the fact that Plaintiffs' time for appeal would expire the next day. Moreover, in view of the nature of the discussion that day, it appeared that the Court might favorably consider allowing further discovery, at least with respect to the Monsanto Defendants. Plaintiffs' counsel bona fidely and properly assumed that, when the Court did not rule on Friday, August 19, 1980, the last day for the plaintiffs to perfect its appeal, that the Court would at least partially grant Plaintiffs' Motion to Reinstate and Reconsider (see affidavit attached hereto as Exhibit C). Moreover, Plaintiffs were aware of this same Court's order in Eva Wilkinson v. Phillips Petroleum Company wherein tne Court had entered a judgment of dismissal. The Plaintiffs there had

filed a request for reconsideration and to reinstate that cause of action and because the Court did not rule on the 30th day, the Plaintiff filed its Notice of Appeal and the court entered an Order stating that it had no authority to consider the Motion to Reinstate because the Plaintiff had filed a notice of appeal, the Court being of the opinion that "this Court is without jurisdiction to consider plaintiffs' motion", citing Kirtlind v. J. Ray McDermott, Inc., 568 F.2d 1166, 1170 (5th Cir., 1978) and U.S. v. Dunbar, 611 F.2d 985, 987 (5th Cir. 1980). Said Order in Wilkinson v. Phillips Petroleum Company C.A.NO. H-78-673, is attached hereto as Exhibit B-5. Despite the fact that this Court in this case stated at the September 18 hearing that it was aware of the imminent running of the 30-day appeal period, the Court did not rule on September 19, 1980 and did not rule until September 22, 1980, three days after the 30-day period had expired. On that date the

Court entered an order denying the Plaintiffs' all relief. Said Order is attached hereto as Exhibit B-6.

22. At the time the Court entered its Memorandum and Order of August 20, 1980 and its Order denying Plaintiffs' Motion to Reinstate and Reconsider of September 22, 1980, the Court still, as far as we know, had not ruled on Plaintiffs' Motion to Compel the Monsanto Defendant to answer the unanswered question in the first set of interrogatories. Moreover, the Court had not ruled upon the Defendant's Motion for Protective Order filed by the Monsanto Defendants with respect to the Second Set of Interrogatories and Request for Production of Documents submitted by the Plaintiffs to the Monsanto Defendants. Moreover, this Court had never reset a submission date on the "Written Motion Docket" or set an oral hearing date for the various Motions to Dismiss and/or for Summary Judgment of the Defendants. Moreover, the Court had not

ruled on the Plaintiffs' previously filed Motion to Defer and Notice of Deposition of the corporate officers of the Defendants for depositions with respect to their various Motions to Dismiss. . . .

APPENDIX 9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, ET AL	:	
Plaintiffs,	:	
VS.	:	C.A. NO. H-79-1883
MONSANTO COMPANY, ET AL,	:	(Filed Oct. 20, 1980)
Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that the above-named Plaintiffs hereby appeal to the United States Court of Appeals for the Fifth Circuit from the judgment entered in this cause of action on the 22nd day of September, 1980, by Judge Norman W. Black.

Respectfully submitted,

LAW OFFICES OF
BENTON MUSSLEWHITE, INC.
3506 Travis Street
Houston, Texas 77002
(713) 520-0621

SIGNED/BENTON MUSSLEWHITE

Attorney in Charge for
Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Notice of Appeal has been forwarded to all counsel of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed, all on this the 17th day of October, 1980.

S/BENTON MUSSLEWHITE

APPENDIX 10

LAW OFFICES OF
LOUIS R. KOERNER, JR.
A PROFESSIONAL LAW CORPORATION
730 CAMP STREET
NEW ORLEANS, LOUISIANA 70130

February 18, 1980

Randy McClanahan, Esq.
Baker & Botts, Esqs.
1 Shell Plaza
Houston, Texas 77002

Re: Mrs. Aage Lasse Alvestad, et al v. Monsanto Company, et al
Civil Action No. H-79-1883

Dear Randy:

This letter is to confirm our conversation this morning in which you agreed to pass the submission date on February 18th on the outstanding Motions in the above referenced case until after production of documents on February 29, 1980. After production of the documents, we will need to decide on a date for submission of the Motions.

In accordance with my agreement with you, I will copy the entire file which is produced during the document production and forward same to you. I understand that you will not be in attendance, but that Steve DeWolf of Vinson & Elkins will.

By copy of this letter, I am advising the Court of our agreement. I attempted to reach the Clerk's office today but apparently due to the holiday, the office was closed, as there was no answer. I will contact the Court on February 19th with regard to this matter. If you have any questions concerning the upcoming production of documents, please do not hesitate to call.

With kindest personal regards, I remain

Sincerely,

S/Cynthia A. Norris

CAN:tc

cc: Jesse E. Clark, Clerk

APPENDIX 11

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, Individually and as Representative of the Estate of AAGE LASSE ALVESTAD, and their Minor Daughter,	:	
Plaintiffs	:	C.A. NO. H-79-1883
VS.	:	(Filed Aug. 6, 1980)
MONSANTO COMPANY, ET AL	:	

MOTION TO DEFER DETERMINATION OF DEFENDANTS' MOTIONS TO DISMISS UNDER RULE 12b OF F.R.C.P., ON GROUNDS OF FORUM NON CONVENIENS AND ON GROUNDS OF LIMITATIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, by and through their attorney of record, and files this Motion to Defer Determination of Defendants' Motions to Dismiss under Rule 12b of F.R.C.P., on grounds of forum non conveniens, and on grounds of limitations and as grounds therefor

would respectfully show unto this Honorable Court the following, to-wit:

I.

Defendants have filed a Motion to Dismiss under Rule 12b of Federal Rules of Civil Procedure, on grounds of forum non conveniens and on grounds of limitations.

II.

Movant would show that he is filing additional briefs and undertaking additional discovery concerning jurisdictional matters in order to develop the facts in this case that were considered relevant in Susan Keane, et al v. Global Marine, Inc., et al, C.A. No. H-77-1006, U.S.D.C. S.D., Tx., Houston Division, Honorable John V. Singleton's Memorandum and Order dated October 24, 1978.

III.

In this connection, Movant would show that he is filing Notices of Deposition, a copy attached hereto, of the officers, agents and/or employers of Defendants with

the most knowledge of facts relevant to a determination of Defendants' Motions to Dismiss. The completion of this discovery is necessary in order that Movant can properly respond to Defendants' Motions. As held by the Supreme Court of the United States in Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738, 48 L.Ed.2d 335, 96 S.Ct. 1848 (1976), to-wit:

> "Dismissals prior to giving the Appellant ample opportunity for discovery should be granted very sparingly."

See also Illinois State Employees Union Counsel 34 AFL-CIO v. Lewis, 473 F.2d 461 (7th Cir. 1972) cert. den'd. 1973, to-wit:

> "Nor should such (dismissal motions) be entered until the party opposing the motion has had a fair opportunity to conduct such discovery as may be necessary to meet the factual basis for the motion..."

IV.

Movant would show that counsel for Defendants do not agree to this Motion and are opposed to same.

WHEREFORE, PREMISES CONSIDERED, Movant prays the Court defer ruling on Defendants'

Motions to Dismiss for one-hundred and ninety (190) days, or, in the alternative, until November 21, 1980.

Respectfully submitted,

LAW OFFICES OF
BENTON MUSSLEWHITE,
INC.

S/BENTON MUSSLEWHITE
3506 Travis Street
Houston, Texas 77002
(713)520-0621

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Notice of Intent to Take Oral Depositions has been p-ovided all counsel of record on this the 6th day of August, 1980.

S/BENTON MUSSLEWHITE

APPENDIX 11 - continued

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. AAGE LASSE ALVESTAD, Individually and as Representative of the Estate of AAGE LASSE ALVESTAD, and their Minor Daughter, Plaintiffs	:	C.A. NO. H-79-1883
VS.	:	
MONSANTO COMPANY, ET AL	:	

NOTICE OF INTENT TO TAKE ORAL DEPOSITIONS

TO: Defendant, Monsanto Company, by and through its attorney of record, Steven DeWolf of Vinson & Elkins, 2100 First City National Bank Bldg., Houston, Texas 77002

Defendants, Dolphin Int'l, S.A. and Dolphin Int'l, Inc. and Monsanto Oil Company of the U.K., Inc., by and through their attorney of record, Randy J. McClanahan of Baker & Botts, 3000 One Shell Plaza, Houston, Texas 77002.

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30, Federal Rules of Civil Procedure, the Plaintiff, by and through his attorney of record, BENTON MUSSLEWHITE, will take the oral deposition, before an

officer authorized to administer oaths,

of the following:

A. The corporate officer(s), agent(s), and/or employee(s) of Defendant Monsanto Company that would have the most knowledge of the corporate relationships between it and:

   1. Monsanto Oil Company of the U.K., Inc.

   2. Dolphin Int'l, Inc. and Dolphin Int'l., S.A.;

B. The corporate officer(s), agent(s), and/or employee(s) of Defendant Monsanto Oil Company of the U.K., Inc. that would have the most knowledge of the corporate relationships between it and:

   1. Monsanto Company;

   2. Dolphin Int'l., Inc. and Dolphin Int'l., S.A.;

C. The corporate officer(s), agent(s), and/or employee(s) of Defendants Dolphin Int'l., Inc. and Dolphin Int'l, S.A. that would have the most knowledge of the corporate relationships between it and

   1. Monsanto Company

   2. Monsanto Oil Company of the U.K., Inc.

particularly as their relationship pertains

to the ownership and control of the vessel

upon which the decedent, Aage Lasse Alvestad was serving at the date of his death, March 22, 1975. . . .

The depositions will take place on the 26 and 27 day of August, 1980 at 9:00 o'clock a.m. in the office of Robert A. Chaffin, 3500 Travis, Houston, Texas 77002 and continue from day to day until completed.

No subpoena duces tecum is necessary since the deposed are parties to this suit.

You are invited to attend and cross-examine.

Respectfully submitted,

LAW OFFICES OF
BENTON MUSSLEWHITE,
INC.

S/Benton Musslewhite
3506 Travis St.
Houston, Texas 77002
(713)520-0621

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Notice of Intent to Take Oral Depositions has been provided all counsel of record on this

6th day of August, 1980.

S/Benton Musslewhite

APPENDIX 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

JESSE E. CLARK
CLERK

P. O. Box 61010
Houston, Texas 77208

August 11, 1980
date

Re: Civil Action H-79-1883

MRS. AAGE LASSE ALVESTAD v. MONSANTO COMPANY, ET AL

PLEASE BE ADVISED that Plaintiff's Motion to Defer Determination of Defts' Motions to Dismiss under Rule 12b, F.R.C.P., on Grounds of Forum Non Conveniens and on Grounds of Limitations, filed August 11, 1980

has been placed on this Court's Written Motion Docket for Sep 1, 1980.

ALL RESPONSES to said pleading ARE DUE ON OR BEFORE this date. Motions will be considered by the Court on the written documents presented by counsel WITHOUT the necessity of a personal appearance by counsel. Copies of the Court's decision will be forwarded to all counsel of record.

REQUEST FOR ORAL PRESENTATION of motions will be considered by the Court on or after the submission date stated above. However, nnless notified by the Clerk, counsel will presume that no oral hearing is permitted.

Very truly yours,

JESSE E. CLARK, CLERK
By: S/P. Robinson, deputy

cc: All counsel of record

APPENDIX 13

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

JESSE E. CLARK
CLERK

P. O. Box 61010
Houston, Texas 77208

August 15, 1980
date

Re: Civil Action H-79-1883

MRS. AAGE LASSE ALVESTAD v. MONSANTO COMPANY, ET AL

JUDGE NORMAN W. BLACK

PLEASE BE ADVISED that Pltfs MOTION To RECONSIDER ORDER DISMISSING CAUSE OF ACTION and MOTION To REINSTATE And MOTION To GRANT A NEW TRIAL

has been placed on this Court's Written Motion Docket for Oct 6, 1980.

ALL RESPONSES to said pleading ARE DUE ON OR BEFORE this date. Motions will be considered by the Court on the written documents presented by counsel WITHOUT the necessity of a personal appearance by counsel. Copies of the Court's decision will be forwarded to all counsel of record.

REQUEST FOR ORAL PRESENTATION of motions will be considered by the Court on or after the submission date stated above. However, unless notified by the Clerk, counsel will presume that no oral hearing is permitted.

Very truly yours,
JESSE E. CLARK, CLERK

By: S/A. Daniel, deputy

cc: All counsel
of record

APPENDIX 14

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

April 12, 1978

MRS. AAGE LASSE ALVESTAD, ETC.	:	
VS.	:	CIVIL NO. S-78-23-CA
MONSANTO CO., ET AL	:	

The following motion was filed on April 12, 1978:

PLAINTIFF'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES.

There was evidence received of the necessary service of motion on the adverse parties. No Motion will be presented to the Judge until indication of service is received by the Clerk and the proper time has elapsed as governed by the Rules of this Court. Indication of service is usually given by a statement at the bottom of the motion, below the signature, showing the date a copy of the motion was mailed to adverse party. This statement should be signed.

All Motions, except those hereafter listed, are to be answered within ten (10) days, unless otherwise allowed by the Court or some applicable rule of the Federal Rules of Civil Procedure. The following motions do not require an answer:

1. Motion to Withdraw or Appear as Counsel;
2. Motion for Extension of Time;
3. Motion to Amend Pladings (unless additional parties are being added).
4. Joint Motions.

THE LOCAL RULE is to consider motions on the pleadings, without oral hearing, unless on showing good cause an oral hearing is granted. Request for oral hearing, if any, should be made when the motion, or the reply is filed. If oral hearing is granted, the Judge will set a date for same and the interested attorneys will be notified.

THE JUDGE desires that memorandum briefs containing authorities relied on as to

matters raised in the motion be filed by the respective parties before the motion is submitted.

Please note also that it is the Court's rule on all documents including forms of orders and judgments, be sent to the Clerk's office and not directly to the Judge.

IF YOU DO NOT DESIRE TO OPPOSE THE ABOVE MOTION, PLEASE INFORM THE CLERK BY LETTER.

MURRAY L. HARRIS, CLERK

S/Shirley Davis
(Mrs.) Shirley Davis,
Deputy Clerk

cc: Mr. Richard E. Gray
Thompson, Knight, Simmons & Bullion
Attorneys at Law
2300 Republic National Bank Bldg.
Dallas, Texas 75201

Mr. R. M. Sharpe, Jr.
Sharpe & Associates
Attorneys at Law
1553 Esperson Building
815 Walker St.
Houston, Texas 77002.